



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-6875

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207696.

The City of Longview (the "city") received a request for all information relating to four named individuals, including 1) calls for service; 2) witness information; 3) victim information; 4) offense reports; and 5) incident reports. You claim that the some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning certain persons. In this case, we believe that those individuals' right to privacy has been implicated. Thus, where these individuals are named as possible suspects or arrestees, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

You also raise section 552.101 in conjunction with section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by former section 51.14(d) of the Family Code, which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records of juvenile conduct that occurred on or after January 1, 1996 but before September 1, 1997 are not made confidential by statute.

In this instance, report number 97-017874 is a law enforcement record concerning juvenile conduct that occurred on or after September 1, 1997, and therefore must be withheld as confidential in its entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. However, report number 96-007528 is a law enforcement record concerning juvenile conduct occurring between January 1, 1996 and September 1, 1997, and cannot be withheld as confidential pursuant to section 552.101 in conjunction with the Family Code.

The remaining submitted information contains social security numbers that may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, some of the remaining submitted information is confidential under section 552.130 of the Government Code, which provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the city must also withhold the marked information under section 552.130.

In summary, where any of the individuals named in the request is listed as a possible suspect or arrestee, the city must withhold this information under section 552.101 in conjunction with common-law privacy. Report number 97-017874 must be withheld as confidential under section 552.101 in conjunction with section 58.007(c) of the Family Code. Social security numbers may be excepted under section 552.101 in conjunction with federal law; and the city must withhold the marked information under section 552.130. The city must release all remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

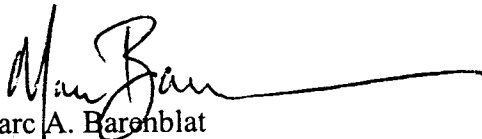
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Baronblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 207696

Enc. Submitted documents

c: Ms. Jackie T. Grier
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(w/o enclosures)